

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

**LILIA PERKINS v. PHILIPS ORAL  
HEALTHCARE, INC., et al.**

**Case No. 12-CV-1414H BGS  
Class Action**

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND  
CERTIFYING SETTLEMENT CLASS**

**WHEREAS**, this matter has come before the Court pursuant to the Motion for Order Granting Final Approval of Class Action Settlement and Certifying Settlement Class (the “Motion”);

**WHEREAS**, the Court finds that it has jurisdiction over this Action;<sup>1</sup>

**WHEREAS**, on [September \_\_], 2013, this Court granted Plaintiff’s Unopposed Motion for Preliminary Approval of the Settlement Agreement and Provisional Class Certification (the “Preliminary Approval Order”);

**WHEREAS**, the Settlement Class conditionally certified in the Preliminary Approval Order has been appropriately certified for settlement purposes only;

**WHEREAS**, the Court has held a hearing on \_\_\_\_\_ to consider the fairness, reasonableness and adequacy of the Settlement Stipulation, has been advised of all objections to the Settlement and has given fair consideration to such objections;

**WHEREAS**, the Court has considered the Motion, the Stipulation of Class Action Settlement, dated May 20, 2013, and the exhibits thereto (the “Settlement Stipulation” or the “Settlement”), and objections to the proposed Settlement; and

<sup>1</sup> Capitalized terms herein have the meaning as specified in the Settlement Stipulation, dated May 20, 2013.

1       **WHEREAS**, the Court is otherwise fully advised in the premises and has  
 2 considered the record of these proceedings, the representations, arguments, and  
 3 recommendation of counsel for the parties, and the requirements of law.

4 **IT IS HEREBY ORDERED THAT:**

5 **I. FINAL APPROVAL OF THE SETTLEMENT AGREEMENT**

6       1. The terms of the Settlement Stipulation are approved. The Settlement  
 7 is in all respects fair, reasonable, adequate and proper, and in the best interest of  
 8 the Class. In reaching this conclusion, the Court has considered a number of  
 9 factors, including an assessment of the likelihood that Plaintiff would prevail at  
 10 trial; the range of possible recovery available to Plaintiff; the consideration  
 11 provided to Settlement Class Members pursuant to the Settlement Stipulation as  
 12 compared to the range of possible recovery discounted for the inherent risks of  
 13 litigation; the complexity, expense and possible duration of such litigation in the  
 14 absence of a settlement; the nature and extent of any objections to the Settlement;  
 15 and the stage of proceedings at which the Settlement was reached.

16       2. The proposed Settlement was entered into by experienced counsel and  
 17 only after extensive arms-length negotiations, including through an Early Neutral  
 18 Evaluation conference before the Honorable Bernard G. Skomal. The proposed  
 19 Settlement is not the result of collusion. The proposed Settlement was entered into  
 20 in good faith, is reasonable, fair and adequate, and is in the best interest of the  
 21 Settlement Class. Class Counsel and the Class Representative have fairly and  
 22 adequately represented the Settlement Class for purposes of entering into and  
 23 implementing the Settlement Stipulation.

24 **II. CLASS CERTIFICATION**

25 **A. CERTIFICATION OF SETTLEMENT CLASS**

26       3. Preliminary approval was granted with respect to the proposed  
 27 Settlement Class on \_\_\_\_\_, 2013:  
 28

1 All California residents who purchased a new AirFloss in California  
 2 between January 1, 2011 and June 24, 2013.

3 **B. Rule 23(a)**

4 4. With respect to the proposed Settlement Class as set forth in the  
 5 Settlement Stipulation, this Court has determined that, for purposes of a settlement  
 6 of the Action only, Plaintiff has satisfied each of the Rule 23(a) Prerequisites:

7 (a) The Class Members are so numerous that joinder of all  
 8 members is impracticable. Fed. R. Civ. P. 23(a)(1).

9 (b) There are questions of law or fact common to the Settlement  
 10 Class. Fed. R. Civ. P. 23(a)(2). Common questions of law or fact include:

11 (1) whether the Philips advertised AirFloss as “An Easier Way to Floss”;  
 12 (2) whether Philips represented that AirFloss replaces flossing; (3) whether  
 13 Philips’ conduct was unlawful; and (4) how any resulting monetary damages to  
 14 consumers should be calculated.

15 (c) The claims of the Class Representative are typical of the claims  
 16 of the Settlement Class. Fed. R. Civ. P. 23(a)(3). Here, Plaintiff has alleged that  
 17 Philips marketed AirFloss as a replacement for flossing and failed to disclose or  
 18 adequately disclose material facts to members of the Settlement Class. Plaintiff  
 19 asserts that there was sufficient uniform treatment by Philips so that the Class  
 20 Representative and each Settlement Class Member (i) presents the same claim  
 21 concerning (ii) the same conduct and (iii) seeks the same relief from Philips. The  
 22 ability of the parties to achieve a settlement on terms applicable to the entire  
 23 Settlement Class underscores the finding of typicality.

24 (d) The Class Representative will fairly and adequately protect the  
 25 interests of the Settlement Class. Fed. R. Civ. P. 23(a)(4). The Class  
 26 Representative does not have interests that are antagonistic to the Class and her  
 27 interests are fully aligned with the interests of other Class Members. Accordingly,  
 28

1 the Court finds that the Class Representative has satisfied Rule 23(a) for purposes  
2 of evaluating this Settlement.

3 **C. Rule 23(b)(3)**

4 5. With respect to the Settlement as contained in the Settlement  
5 Stipulation, the Court also “finds that the questions of law or fact common to class  
6 members predominate over any questions affecting only individual members,” and  
7 “that a class action is superior to other available methods for fairly and efficiently  
8 adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3).

9 6. Here, Settlement Class Members share a common legal grievance  
10 arising from Philips’ alleged marketing of AirFloss as a replacement for  
11 flossing and Philips’ failure to disclose or adequately disclose material facts  
12 related to AirFloss to any of the purchasers of AirFloss. Common legal and factual  
13 questions are central to all Class Members’ claims and predominate over any  
14 individual questions that may exist for purposes of this Settlement, and the fact that  
15 the Parties are able to resolve the case on terms applicable to all Settlement Class  
16 Members underscores the predomination of common legal and factual questions  
17 for purposes of this Settlement. In concluding that Settlement Class should be  
18 certified pursuant to Rule 23(b)(3) for settlement purposes only, the Court further  
19 finds that a class action is superior for purposes of resolving these claims because  
20 individual Class Members have not shown any interest in individually controlling  
21 the prosecution of separate actions. Moreover, the cost of litigation far outpaces  
22 the individual recovery available to any Plaintiff. *See* Fed. R. Civ. P. 23(b)(3)(A).  
23 Accordingly, the Court finds that, for purposes of this Settlement, Rule 23(b)(3)  
24 has also been satisfied.

25 7. The Court finds that the Class Representative is an adequate  
26 representative to maintain her consumer fraud claims on behalf of the Settlement  
27 Class Members. The Court hereby certifies, for settlement purposes only, the  
28 following Settlement Class:

1 All California residents who purchased a new AirFloss in California  
2 between January 1, 2011 and June 24, 2013.

### 3 **III. NOTICE**

4 8. The Court finds that the Notice Program (i) satisfied the requirements  
5 of Rule 23(c)(3) and due process; (ii) was the best practicable notice under the  
6 circumstances; (iii) reasonably apprised Settlement Class Members of the  
7 pendency of the action and their right to object to the proposed Settlement or opt  
8 out of the Settlement Class; and (iv) was reasonable and constituted due, adequate  
9 and sufficient notice to all those entitled to receive notice. Additionally, the Class  
10 Notice adequately informed Class Members of their rights in the Action. *See* Fed.  
11 R. Civ. P. 23(c)(2).

### 12 **IV. COUNSEL FEES AND COSTS**

13 9. The Court hereby grants Class Counsel's request for an award of  
14 reasonable attorneys' fees and expenses in the amount of \$\_\_\_\_\_ to be paid by  
15 Philips, and an Incentive Award for the Class Representative in the amount of  
16 \$\_\_\_ to be paid by Philips.

### 17 **V. RELEASES AND FURTHER RELIEF**

18 10. As the terms are defined in the Settlement Stipulation, each Released  
19 Party is released from the Released Claims that any Releasing Party has, had, or  
20 may have in the future, against each Released Party. The Releases are independent  
21 of the dismissals with prejudice provided herein. The Covenant Not To Sue has  
22 been given by each Settlement Class Member in favor of each Released Party, by  
23 which all Settlement Class Members are bound. Settlement Class Members are  
24 barred and enjoined from asserting against any Released Party any Released  
25 Claim.

26 11. Further, each Releasing Party and Settlement Class Member, and their  
27 respective present and former parents, subsidiaries, divisions and affiliates, the  
28 present and former partners, employees, officers and directors of each of them, the

1 present and former attorneys, accountants, experts, consultants and insurers, and  
 2 agents of each of them, each of the foregoing solely in their capacity as such, and  
 3 the predecessors, successors, heirs and assigns of each of them, are released from  
 4 all claims of every nature and description, known and unknown, that any Released  
 5 Party has had, or may in the future have relating to the initiation, assertion,  
 6 prosecution, non-prosecution, settlement and/or resolution of the Action or the  
 7 Released Claims, and all Released Parties are barred and enjoined from asserting  
 8 the same.

9       12. Further, Philips and any retail seller and/or distributor of AirFloss,  
 10 their respective present and former parents, subsidiaries, divisions and affiliates,  
 11 the present and former partners, employees, officers, and directors of each of them,  
 12 the present and former attorneys, accountants, experts, consultants, insurers and  
 13 agents of them, and the predecessors, successors, heirs and assigns of each of them  
 14 are released from all claims of every nature and description, known and unknown,  
 15 that any Releasing Party has, had or may in the future have relating to the defense,  
 16 settlement and/or resolution of the Action or the Released Claims, and all  
 17 Releasing Parties are barred and enjoined from asserting the same.

## 18 **VI. OPT-OUTS**

19       13. A list of those members of the Class who have timely elected to opt  
 20 out of the Settlement and the Class, and who therefore are not bound by the  
 21 Settlement, the provisions of the Settlement Stipulation, and this Order, has been  
 22 submitted to the Court and is attached as Exhibit "A" and incorporated by  
 23 reference herein. All other members of the Settlement Class (as permanently  
 24 certified herein) shall be subject to all of the provisions of the Settlement, the  
 25 provisions of the Settlement Stipulation, and this Order.

## 26 **VII. CONTINUING JURISDICTION**

27       14. Without any way affecting the finality of this Order, the Court hereby  
 28 retains jurisdiction over the Parties to the Settlement Stipulation, including all

1 Settlement Class Members, and Class Counsel to construe and enforce the  
2 Settlement Stipulation in accordance with its terms for the mutual benefit of the  
3 Parties.

4 **IT IS SO ORDERED.**

5 Dated: \_\_\_\_\_  
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7 HON. MARILYN HUFF  
8 UNITED STATES DISTRICT JUDGE  
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